fact has rarely been disputed since Bowen, L. J., declared, in *Edgington* v. *Fitzmaurice*, L. R. 29 Ch. Div. 459, that "the state of a man's mind is as much a fact as the state of his digestion." If, then, this misrepresentation of a present fact is accompanied by the other elements of deceit, it seems clear on principle that the action should be allowed. See 1 Bigelow on Fraud, 484. Whether or not it would be expedient in practice is quite another question.

SPECIAL LEGISLATION — CLOSING BARBER SHOPS ON SUNDAY. — The constitutionality of so called "special legislation" has again been denied in Illinois. An act to close barber shops on Sunday was reviewed by a minor court in *The People* v. *Eden* (28 Chicago Legal News, 100), and decided squarely on the ground that the legislature made an arbitrary discrimination against a special class. Although the court remarked upon there being a deprivation of liberty and property, it admitted at the end of the decision that, had the law applied to all kinds of business, it would have been valid. The objection was, then, not that the legislature had forbidden an occupation on Sunday, but that it had singled out a particular trade, and had not extended its prohibition to others also. It is submitted that this omission is a matter of legislative discretion, and does not furnish a proper occasion for interference by the judiciary.

The way in which American courts have come to exercise a supervision over legislation, and the limits to which such supervision is subject, have been discussed elsewhere. (Professor Thayer, in 7 HARVARD LAW REVIEW, 129. See also 9 HARVARD LAW REVIEW, 277.) It is enough to say here that the making of laws has been intrusted to the legislative branch of the government, and so long as the actions of the legislature are such that one could conceive them to have been actuated by some rational public reason, the legislature must be deemed to have acted within its province. An analogy may be found in the discretion given to a jury on matters of fact; a verdict will not be set aside so long as a reasonable man could possibly have entertained the jury's opinion.

Applying this test to the subject of special legislation, can it be said, for example, that a reasonable man could not by any possibility have seen fit to apply a Sunday closing rule to barber shops without at the same time applying it to other trades? Some rational reason must be found, it is said, for singling out barber shops; another way of putting it is to say that some rational reason must be shown why the legislature did not go farther. It would not be argued that the legislature must go, if at all, to the full length of closing all shops, including that of the apothecary. Some line must be drawn; and it is conceivable that the legislature may from their present knowledge feel incompetent to draw that line. They may feel sure that barbers should fall on the prohibited side, and yet be in just doubt as to other occupations. Can it be said, then, that the legislature might not have had a reasonable ground for declining to carry their prohibition to its utmost extent? If not, then there is a conceivable reason why it should have stopped where it did. If, whenever a mischief arose in any particular instance, it were necessary for the legislature to consider all other possible instances to which they might think the mischief applied, legislation would indeed be a slow process.

There has been a tendency in some of our States, especially in Illinois, to drift away from what is here conceived as the proper view of the power of a legislature to pass "special legislation." On the other hand, the

Supreme Court of the United States has repeatedly affirmed that because legislation is special it does not therefore deny the equal protection of the laws. *Missouri Pac. R. R.* v. *Humes*, 115 U. S. 512; *Barbier* v. *Connolly*, 113 U. S. 27; *Missouri R. R.* v. *Mackey*, 127 U. S. 205; *Minnesota R. R.* v. *Beckwith*, 129 U. S. 27. In *Soon Hing* v. *Crowley*, 113 U. S. 704, it was said, "The specific regulations for one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws." See also an able dissenting opinion in *State* v. *Loomis*, 115 Mo. 307.

Is a Trust Invalidated by Lack of Beneficiaries? — A recent Alabama case, *Festorazzi et al.* v. *St. Joseph's Church of Mobile et al.*, 18 So. Rep. 394 (Ala.), raises again the question involved in *Morice* v. *Bishop of Durham*, 10 Vesey, 521, whether under a bequest for an indefinite object the trustee shall be allowed to carry out the testator's wishes. The court decreed that the trustees of a bequest "to be used in solemn masses for the repose of my soul," should not perform the trust, but that the sum must be held in trust for the testator's next of kin. This accords with *Morice* v. *Bishop of Durham*, and decisions in several of the American States, particularly New York, where the doctrine was made famous by the ruling on the "Tilden Trust." The doctrine obviously is based on the fact that there is nobody who can compel performance according to the terms of the will, and therefore there is no legal trust. But under this doctrine the testator's wishes are utterly defeated. It is admitted that if the honorary trustee does not choose to fulfil his trust, he should become constructive trustee for the testator's next of kin, since the testator never intended him to receive the benefit, and next to the intended beneficiary the testator's next of kin have the best equitable right. But it would seem to be better justice and equally good law that where the trustee is willing to fulfil his duty he should not be interfered with.

In most jurisdictions an exception to this doctrine of *Morice* v. *Bishop of Durham* is taken in the case of charitable trusts. Even in New York the exception is now established by statute. The place of the *cestui que trust* is assumed by the State. In Massachusetts and Pennsylvania a bequest for masses is held to come within this exception. But elsewhere, on the theory of *Morice* v. *Bishop of Durham*, a bequest for masses is void, except in Ireland, where by numerous decisions the trustee is allowed to fulfil the trust. In England such a bequest is void as a superstitious use (1 Ames's Cas. on Trusts, 210, 211); yet a gift *inter vivos* upon trust for masses is in general valid, even in New York, where *Morice* v. *Bishop of Durham* is in other respects followed to the bitter end. In addition to these departures from *Morice* v. *Bishop of Durham*, there are several groups of cases indistinguishable from it in principle, in which equity judges have declined to prevent the performance of a purely honorary trust. Such cases are those of bequests in trust for erection